

401 KAR 47:100. General provisions for obtaining a solid waste permit.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-100, 224.40-305, 224.40-310, 224.46-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224.40-305 requires that persons who engage in the management, processing, and disposal of waste first obtain a waste facility permit from the cabinet. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities and the standards for certified operators. This administrative regulation establishes the procedures for obtaining a permit for a solid waste facility.

Section 1. Overview of the Solid Waste Site or Facility Permit Program. This administrative regulation sets forth the specific requirements for the solid waste site or facility permitting program. KRS 224.40-305 requires acquisition of a permit to establish, construct, operate and maintain a waste site or facility. The term waste site or facility is defined in KRS 224.01-010. Owners or operators of solid waste sites or facilities shall have permits during the active life (including the closure period) of the facility and, for any facility that closes after July 1, 1992, during any closure care period required under 401 KAR Chapter 48.

Section 2. Scope of the Permit Requirements. (1) The permit process is specified in 401 KAR 47:160. A permit application consists of three (3) parts: notice of intent to apply for a solid waste permit (see 401 KAR 47:170 or 401 KAR 48:200), an administrative application (see 401 KAR 47:180), and a technical application (see 401 KAR 47:190). The permit program has separate additional administrative regulations that contain technical requirements. These separate administrative regulations are used by the cabinet to determine whether permits shall be issued and what conditions to those permits are required. These separate administrative regulations are located in this chapter and 401 KAR Chapter 48.

(2) Specific exclusions. The following persons are among those who are not required to obtain a solid waste site or facility permit:

(a) Disposers of agricultural waste, including manures and crop residues returned to the soil as fertilizers or soil conditioners by practices common to soil conditioning, provided the wastes are used on the same farm on which they are generated;

(b) Disposers of mining over-burden, coal mining wastes, refuse, and coal mining by-products returned to the mine site on the site of generation, including any nonhazardous solid waste generated directly as a result of the mining operation on site;

(c) Owners or operators of injection wells that dispose of solid waste with an underground injection control permit issued by the U.S. EPA, providing they comply with the conditions of that permit;

(d) Users of septic tanks in compliance with KRS 211.972 through 211.982;

(e) Owners or operators of mining surface impoundments and other surface impoundments with Kentucky Pollution Discharge and Elimination System (KPDES) permits, providing they comply with the conditions of their permit;

(f) Persons managing solid waste during immediate response to any of the following situations:

1. A spill of a solid waste;
2. An imminent and substantial threat of a spill of solid waste; or
3. A spill of a material which, when spilled, becomes a solid waste; and

(g) Owners or operators of surface impoundments receiving solid waste that treat domestic sewage that does not contain any industrial wastewater, or are publicly owned treatment works (POTW) for the treatment of domestic sewage, if the facility complies with the conditions of its KPDES or NPDES permit.

(3) Specific inclusions. Owners and operators of certain facilities with permits under other programs for certain aspects of the facility operation shall also obtain solid waste site or facility permits. The following types of facilities are required to have solid waste site or facility permits:

(a) Solid waste sites or facilities which have or have had a surface mining permit and dispose of wastes other than mine spoils or coal mining solid wastes; and

(b) Any person who initiates or continues solid waste containment or disposal activities after an immediate response deadline is passed is subject to all applicable requirements of this chapter and 401 KAR Chapter 48 for those activities.

(4) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. A granted permit-by-rule for any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

Section 3. Considerations of Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable federal laws. These laws include but are not limited to:

(1) The Wild and Scenic Rivers Act (1968), as amended through October 1984.

(2) The National Historic Preservation Act of 1966, as amended through December 1980.

(3) The Endangered Species Act (1973), as amended through June 1984.

(4) The Fish and Wildlife Coordination Act (1934), as amended through July 1965.

Section 4. Limitations of a Permit. (1) A permit may be modified, or revoked, during its term for cause as set forth in 401 KAR 47:130 and in 401 KAR Chapter 40.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local laws or administrative regulations.

Section 5. Prohibition of Use of Unpermitted Facilities. (1) Restrictions. No owner or operator shall manage, process or dispose of solid waste at a solid waste site or facility unless the owner or operator has:

(a) The ability to qualify for a registered permit-by-rule in accordance with Section 1(1) of 401 KAR 47:110 and submits before October 1, 1990, the registration form to the cabinet;

(b) Qualified for a permit-by-rule in accordance with 401 KAR 47:150;

(c) Qualified for a registered permit-by-rule in accordance with Section 1(1) of 401 KAR 47:110; or

(d) Obtained a valid solid waste facility permit issued by the cabinet in accordance with 401 KAR Chapter 47 or holds a permit issued by the cabinet prior to the effective date of this administrative regulation.

(2) Permit required. No person shall engage in the management, processing, or disposal of solid waste at a solid waste site or facility without first obtaining a permit from the cabinet as specified in KRS 224.40-305. (16 Ky.R. 1734; 2183; 2352; eff. 5-8-1990; Crt eff. 10-9-2018.)